

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEVIN LEE HELTON,

Defendant-Appellee.

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UNPUBLISHED

December 18, 2001

No. 230256

Oakland Circuit Court

LC No. 00-173399-FH

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant was charged with operating a motor vehicle under the influence of intoxicating liquor, third offense, MCL 257.625; and operating a motor vehicle with a suspended license, second offense, MCL 257.904. The trial court granted defendant's motion to quash, suppress evidence, and dismiss the case. The prosecution appeals as of right. We reverse and remand for reinstatement of the charges against defendant.

The prosecutor contends that the trial court erred by granting defendant's motion to quash, suppressing the evidence discovered pursuant to the stop of defendant's vehicle, and dismissing the charges. We agree. When a circuit court reviews a district court's decision to bind over a defendant for trial, reversal is only appropriate if the record indicates that the district court abused its discretion. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997); *People v Cotton*, 191 Mich App 377, 384; 478 NW2d 681 (1991). In turn, we then review de novo the circuit court's decision to grant or deny a motion to quash charges in order to determine whether the circuit court erred in its finding that the district court abused its discretion. See *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 463 (2000); see also *People v Grayer*, 235 Mich App 737, 739; 599 NW2d 527 (1999); *People v Northey*, 231 Mich App 568, 574; 591 NW2d 227 (1998). Thus, the district court's determination regarding probable cause will not be disturbed unless it was wholly unjustified by the record. *Jenkins, supra*; *Northey, supra* at 575.

Brief, investigative stops of vehicles are permitted if a police officer has a reasonable suspicion of ongoing criminal activity. *People v Rizzo*, 243 Mich App 151, 155; 622 NW2d 319 (2000); *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994). The reasonableness of an officer's suspicion is determined based on the totality of the circumstances. *People v LoCicero (After Remand)*, 453 Mich 496, 501-502; 556 NW2d 498 (1996). In

analyzing the totality of the circumstances, a police officer is permitted, if not required, to consider the modes of operation of certain types of lawbreakers and to draw inferences from the facts in light of his experience. See *id.* at 502; *People v Nelson*, 443 Mich 626, 636; 505 NW2d 266 (1993). As such, deference should be given to the officer's experience and to the known patterns of certain types of lawbreakers. *Rizzo*, *supra* at 156. This Court has previously held that erratic driving can give rise to a reasonable suspicion of unlawful intoxication so as to justify a police officer's investigatory stop of a vehicle. *Christie*, *supra* at 309; *People v Chinn*, 141 Mich App 92, 97; 366 NW2d 83 (1985).

In *Christie*, *supra*, a sheriff's department deputy observed the defendant's vehicle weaving from side to side in its traffic lane and driving on the lane markers. *Id.* at 306. The deputy then saw the defendant activate his turn signal and drive past several driveways and one street before turning. *Id.* When the deputy stopped the vehicle to investigate the extended use of the turn signal, he immediately noticed a strong smell of intoxicants on the defendant's breath. *Id.* at 306-307. After the defendant had difficulty performing several field sobriety tests, the deputy arrested him. *Id.* at 307. This Court found that reasonable cause existed to suspect that the defendant was driving while intoxicated because the vehicle was weaving in the traffic lane and driving on the lane markers. *Id.* at 309. In addition, the defendant's turn signal was flashing for two-tenths of a mile before he turned. *Id.* This Court observed that the defendant's driving patterns appeared to be classic indications of intoxication and held that the trial court erred by finding that the investigatory stop of the vehicle was unreasonable. *Id.* at 309-310.

Similarly, in the instant case, the officer observed defendant's vehicle weaving in its lane while traveling on John R. The vehicle then made a wide, expanding turn and continued weaving in its lane as it traveled down Woodward Heights. The officer testified that because he had previously made several hundred stops involving impaired or intoxicated drivers and since he had considerable training in this regard he was able to discern whether a driver was impaired or intoxicated by observing the driver. When assessing the totality of the circumstances, we find that the officer properly used his training and experience in order to detect and apprehend an intoxicated driver. *LoCicero*, *supra* at 502; *Nelson*, *supra* at 636. Further, erratic driving can give rise to a reasonable suspicion of driving while intoxicated so as to justify the stop of a vehicle. *Christie*, *supra* at 309. Therefore, considering the similarity between *Christie*, *supra*, and the instant case, a similar result is required.

Defendant attempts to distinguish this case by contending that his weaving and wide turn did not constitute civil infractions, whereas the defendant in *Christie*, *supra*, committed a driving violation by driving on the lane markers. Defendant also contends that the trial court based its decision on its finding that defendant was driving in a perfectly legal manner prior to the stop. We find these contentions to be unpersuasive. "The question is not whether the conduct is innocent or guilty. Very often what appears to be innocence is in fact guilt, and what is indeed entirely innocent may in some circumstances provide the basis for the suspicion required to make an investigatory stop." *Nelson*, *supra* at 632. Instead, the question is whether, in the totality of the circumstances and considering the officer's previous experience, reasonable cause existed to suspect ongoing criminal activity. *Rizzo*, *supra* at 155-156; *Christie*, *supra* at 308. Here, because the officer's training and experience indicated, in the totality of the circumstances, that defendant may have been intoxicated, reasonable suspicion existed to justify the stop of

defendant's vehicle. Consequently, the trial court erred by granting defendant's motion to quash, suppressing the evidence discovered as a result of the stop, and dismissing the charges.

Reversed and remanded for reinstatement of the charges against defendant. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Henry William Saad

/s/ Kurtis T. Wilder